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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,933	12/30/2003	David J. Parins	1001.1676101	1930
28075 7590 08/16/2007 CROMPTON, SEAGER & TUFTE, LLC 1221 NICOLLET AVENUE SUITE 800 MINNEAPOLIS, MN 55403-2420			EXAMINER TOWA, RENE T	
			ART UNIT 3736	PAPER NUMBER
			MAIL DATE 08/16/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

Application No.

10/748,933

Applicant(s)

PARINS ET AL.

Examiner

Rene Towa

Art Unit

3736

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 30 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1,3-15,17-22,59 and 60.  
Claim(s) withdrawn from consideration: 23-54.

**AFFIDAVIT OR OTHER EVIDENCE**


8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Continuation of 3. NOTE: The proposed claim amendments do not place the application in better form for appeal by materially reducing the issues for appeal and add new claims 63-68 without canceling a corresponding number of finally rejected claims.

Continuation of 11. does NOT place the application in condition for allowance because: In regards to the Applicant's argument against the propriety of the finality of the last Office action, the Examiner recaps the procedure history as follows: in September 2006, Applicant amended the claims in response to a non-final rejection submitted in June 2006; as a result, the Examiner issued a final rejection in November 2006 due to Applicant's amendment to the claims; an appeal was later filed in February 2007, which appeal was upheld in March 2007 (via an appeal conference). The Examiner notes that the decision of the Appeal conference does not remand the case back to a non-final rejection; as such, the conditions prior to the issuance of first Final rejection remain in play, notably the amendment of the claims submitted in September 2006, which resulted in a first Final rejection. As such, the statement regarding the amendment of claims 1 & 14 in the November 2006 Final Office action remains in vigor. consequently, because the claims had been amended in September 2006, necessitating a Final rejection, the same conditions would necessitate a Final rejection in the May 2007 Final rejection with or without new grounds of rejections since Applicant had amended the claims. As such, the Examiner submits the finality of the last Office action is proper. In regards to the Applicant's arguments against the merits of the case, the Examiner has fully discussed the same issues in a prior Office action (see May 2007 Final Office action at pages 13-15), and Advisory Action (see January 2007 Advisory Action). Applicant's speculation as to the reasons for reopening the case are completely immaterial since Applicant did not attend the pre-Appeal Conference and should therefore not speculate as to what was or was not said therein. The Applicants further raised several points, which they later claim were never rebutted when in fact they have (see the above-identified Office action, May 2007, and Advisory Action, January 2007). In essence, in an attempt to establish what would seem to follow from reading the prior art reference of Richardson et al., the Applicants have essentially set out to provide their own interpretation of the prior art of Richardson et al. and continue to make several erroneous assertions, against the Examiner's illustration in the Office action; for example, the Applicants contend that a tubular member, in Richardson, is limited to the type of material, and thus figure 23 should not be interpreted as the tubular member because the same material was used beyond the ball of solder 185 to make the tip of the guidewire. In response thereof, the Examiner notes that, in light of the Applicant's disclosure, "a tubular member" is not merely defined by the type of material but rather, in part, by the position of said member. MPEP, section 2111.01 (IV) clearly states that "The specification should also be relied on for more than just explicit lexicography or clear disavowal of claim scope to determine the meaning of a claim term when applicant acts as his or her own lexicographer; the meaning of a particular claim term may be defined by implication, that is, according to the usage of the term in >the< context in the specification. See Phillips v. AWH Corp., \*415 F.3d 1303<, 75 USPQ2d 1321 (Fed. Cir. 2005) (en banc); and Vitronics Corp. v. Conceptronic Inc., 90 F.3d 1576, 1583, 39 USPQ2d 1573, 1577 (Fed. Cir. 1996). Compare Merck & Co., Inc., v. Teva Pharms. USA, Inc., 395 F.3d 1364, 1370, 73 USPQ2d 1641, 1646 (Fed. Cir. 2005), where the court held that patentee failed to redefine the ordinary meaning of "about" to mean "exactly" in clear enough terms to justify the counterintuitive definition of "about." ("When a patentee acts as his own lexicographer in redefining the meaning of particular claim terms away from their ordinary meaning, he must clearly express that intent in the written description.")". As such, absent any special definition set forth in the specification to redefine the term "tubular member," the Examiner has proceeded to attribute the meaning according to the context in the specification. As such, a tubular member may be something, which "is disposed about and connected to the distal end of the core member" and is also "connected to the coil member." When said definition, is applied to figure 23, obviously the portion of the guidewire after the mass of solder is not part of the "tubular member" and should therefore not be construed as such, contrary to the Applicants' assertion since the tubular member should be disposed about the core member and connected to both the core member and the coil. In view of the foregoing, the Applicant's request for reconsideration has been considered by fails to place the case in condition for allowance.

  
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